that the Grievance Board procedures supplant the chapter 75 procedures under title 5, United States Code. Obviously, nothing in this section or in the rest of the bill cuts off the right of a member of the Foreign Service to appeal to the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Special Counsel, or Federal court, under the provisions of any other law.

FORMER SPOUSE PENSION

Before I begin my explanation of this section, I want to point out a typographical error in the conference report. In the first sentence of section 814(a)(3), the "on" should be "or" the second time it appears.

The conference committee adopted the Senate language on retirement benefits for divorced Foreign Service spouses, with three modifications.

First, the effective date provision (Section 2403(e)(2)) was revised so that the provisions relating to the rights of former spouses to receive survivor annuities apply only in the cases of individuals who become former spouses after the effective date of the act—February 15, 1981.

Second, a new provision was added to permit an individual who prior to the effective date of the act had a former spouse to elect to provide a survivor benefit for the former spouse.

Third, new provisions were added to permit the parties to enter into spousal agreements regarding their respective rights under chapter 8 of this bill. Such an agreement will be given the same effect as a court order allowing the parties to adjust their respective rights without the necessity of going to court.

This legislation attempts to remedy an inequity in current Federal retirement policy—its failure to assure retirement protection to spouses and divorced spouses of Federal employees. Whereas social security provides automatic benefits for spouses and former spouses, married at least 10 years, Federal retirement law has previously not recognized the contribution of the nonworking spouse or former spouse.

In approving the provisions in the Foreign Service Act, Congress recognizes the vested interest of the nonworking spouse. There has been a traditional division of labor in families by which men assume the breadwinning function and women assume family responsibilities. By taking time out of the work force to raise families, women sacrifice their own work opportunities to promote their husband's careers. As a result of long periods out of the work force as well as their own job mobility, women have been prevented from building their own retirement credit and from vesting for their own pension. The failure of the pension system to recognize the value of the support services provided by the wife has permitted women to fall between the cracks of our pension system and suffer the cruel consequences of poverty in old age.

Congress rejected the proposal that retirement benefits for Foreign Service divorced spouses be left strictly to the discretion of the State courts. Instead Congress adopted Federal guidelines to entitle divorced spouses to a pro rata portion of the retirement annuity and survivor benefits based on the number of years of marriage during creditable years of service, unless the court decided or the parties agreed otherwise.

The rationale for the Federal pro rata guidelines was stated in the reports of both the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations:

Equally unsatisfactory is the decision to leave this problem to a solution by court order. Access to the courts is expensive, particularly for individuals such as Foreign Service spouses who typically have no jobs, no insurance, and no other income to speak of. There is no real precedent for awarding to former spouses a percentage of pension or survivor annuities. In addition, widely varying divorce laws from state to state would result in different awards of a Federal benefit for the same deprivations. Furthermore, there is little or no awareness among the legal community of the special problems faced by Foreign Service spouses. Finally, overseas service frequently results in cutting off these individuals from their community roots, thereby exacerbating the problems normally faced by women seeking divorce. In particular, this results in reliance on a husband's lawyer or on his recommendations. Section 814, therefore, seeks to provide some protection for these individuals through the mechanism of the retirement system.

As a result of the introduction of "no fault" divorce in the last decade and its adoption in all but 2 States, the number of divorces has soared to 1 million annually. Since "no fault" was adopted without the accompanying economic protections for nonworking spouses advocated by the Family Law Section of the American Bar Association, women suffered the economic burden of divorce. A 1979 census survey indicates that only 4 percent of divorced women receive any alimony. Moreover, 78 percent of women with custody of their children received not 1 cent in child support from the fathers of these children.

Therefore, I hope the courts will be responsive to this change in the law. Prior to passage of this act, courts were prohibited from awarding the survivor benefits to older women who had spent long and honorable careers in the Foreign Service and had no other source of retirement income. Now that Congress has changed this defect in the retirement law, I expect courts to consider survivor benefits in all future Foreign Service divorce cases.

The committees were deeply aware of the inequities dealt to Foreign Service spouses who were divorced prior to this act. To ameliorate their plight, the conference report permits a participant or former participant of the Foreign Service retirement system to elect to provide a survivor benefit for a former spouse. Obviously, if a participant can elect to provide such benefits, a court, if the situation warrants, can order a participant to elect to provide survivor benefits.

Our intent is not to force the reopening of numerous divorces. There are cases, however, in which equity and fairness require the courts to reconsider preexisting property settlements. In deciding whether to reopen old cases, courts should consider the availability of survivor benefits under section 2109 new property.

Moreover, couples should be permitted to reopen negotiations regarding their property settlements. If they agree that the divorced spouse should receive the survivor benefits, the courts should honor such negotiations and permit the divorced spouse to pay any back payments due if this is part of the spousal agreement.

The new law states that the presumption of pro rata entitlement will become effective unless changed or rejected by a court within 12 months after the date of divorce or annulment becomes final. However, there is no time limit stipulated by the legislation that would restrict the provisions of a spousal agreement or court order concerning already divorced Foreign Service spouses.

In cases where a final decree has been issued, but no valid property agreement has been signed, the guidelines provided in this act are intended to apply.

It should be emphasized that section 807(c), which permits an individual to decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State, applies only to the portion of the annuity to which the Foreign Service participant is entitled. In no way may the participant limit the entitlement of the former spouse.

Section 806(b)(1)(D) permits the Secretary of State to prescribe regulations under which a participant or former participant may make an election concerning survivor benefits without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Secretary of State that the participant does no know, and has taken all reasonable steps to determine the whereabouts of the spouse or former spouse. Obviously, where the participant does not take reasonable steps to find the missing spouse or former spouse, that spouse or former spouse, if he or she later appeared, would have a cause of action against the participant or the Secretary of State or both for the damages suffered as a result of the improper election.

In the future, I think that the Congress should take another look at retirement benefits for those Foreign Service spouses who did not benefit from this bill. I think that the Government has failed to provide adequate compensation to those spouses in exchange for their years of frequent moves to follow the Foreign Service officer and unpaid hours of service performing representational duties. Until October 1, 1976, when the Foreign Service Retirement System was changed to be made consistent with the Civil Service Retirement System, there was a mandated survivor annuity for the Foreign Service spouse designating the spouse as beneficiary by name, in an instrument which both spouses signed. Moreover, the spouse was entitled to this annuity, even if as a widow she remarries before age 60. I do not think that Congress can close the books on the Foreign Service spouse issue until it has done something for those spouses who have received no recompense. One possible solution would be to use the grantee widow approach adopted earlier by the Foreign Service Retirement Act. It provided a minimum survivor annuity for those

widows whose husbands had not taken a reduction in the primary annuity to provide survivor benefits and thereby retroactively enabled them to receive a survivor annuity.

The bill requires the Secretary of State annually to inform participants and their spouses and former sopuses of their rights under section 814 of the bill. Congress expects that the State Department will involve the Family Liaison Office in notifying participants and their spouses and former spouses of the right conferred by this bill. We expect aggressive efforts to notify individuals of their new rights.

Provisions of the act permit parties to enter into spousal agreements with respect to their rights under chapter 8. Such an agreement will be given the same effect as a court order, allowing the parties to adjust their respective rights without the necessity of obtaining a court order. I urge the Secretary of State to review, advise, and generally assist participants and their spouses in the writing of spousal agreements. The Secretary should provide advisory opinions to participants and their spouses or former spouses on whether their spousal agreements can be honored.

This new retirement law should be interpreted consistent with its intent by both the courts and the Department of State. It is the intent of Congress that Foreign Service divorced spouses be protected against poverty in old age. Regulations and decisions that restrict these protections are contrary to the will of Congress.

The reason I feel constrained to emphasize this point is that the Office of Personnel Management has gone out of its way to write restrictive regulations that have resulted in the denial of court orders contrary to the will of Congress.

When Public Law 95-366 went into effect on September 15, 1978, it mandated the Office of Personnel Management "to honor the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation."

The intent of the law seems clear enough, but the Office of Personnel Management has messed it up.

In a July 28, 1980, report on the implementation of Public Law 95-366, the General Accounting Office reports that the Office of Personnel Management has rejected 30 court orders and thereby denied apportionment to the affected former spouses. In addition, the General Accounting Office indicates there are another 50 to 100 court orders which were rejected and retired to the records storage facility.

I am outraged that the Office of Personnel Management failed to inform the interested parties in these rejected cases when the Office of Personnel Management regulations were changed to permit the Office of Personnel Management to honor the court orders. Furthermore, the Office of Personnel Management denied a retiree's request that part of his retirement annuity be assigned to his former spouse although the General Accounting Office indicates that the Office of Personnel Management has the authority to permit such allotments. It is callous treatment both of the State courts and those former spouses.

I urge John P. Bowler, Chief of the Office of Personnel Management's Policy Development Section, to immediately reprocess these rejected court orders and retrieve those which are in the storage facility in Boyers, Pa. Innocent women should not be made to suffer because of some bureaucrat's nitpicking.

Moreover, the Office of Personnel Management's regulations of March 7, 1980, must be expanded. The Office of Personnel Management procedures provide for direct payments to the former spouse only if the retiree does not object to such a procedure, even though the court specifically stated that the retiree was to make the payment. It is totally contrary to congressional intent for the Office of Personnel Management to place this restriction on court orders.

Unless there is an administrative solution to the problems soon, I can assure the Office of Personnel Management that a legislative solution will be forthcoming.

I commend the Congress for adopting this precedent setting legislation to recognize the vested interest of the spouse of Federal employees to a pro rata share of the retirement and survivor annuities.

This legislation is consistent with recommendations of the President's Commission on Pension Policy in its interim report of May 1980.

Moreover, it is another step toward more equitable treatment of spouses. Passage of Public Law 95-366 last Congress gave the courts the authority to divide Civil Service Retirement System annuities and removed the immunity of Federal civilian pensions from such court orders.

The Congress has thus far failed to make this provision applicable to the military. To quote the recent General Accounting Office report:

It should be pointed out that, except for garnishment actions, the uniformed services retirement system does not allow for direct payment of retirement benefits to former spouses in compliance with court orders. We know of no reason why this system should not be consistent with the civil service and Foreign Service systems.

GRIEVANCES

We made some improvement in the grievance section of the bill during the conference. Nevertheless, I still hear a lot of dissatisfaction with the operations of the Grievance Board. In the civil service, grievance systems are negotiated between management and the exclusive representative of the employees. Because of failure of those negotiations in the early seventies, the grievance mechanism is statutory in the Foreign Service. My preference would be to have a negotiated system in the Foreign Service as well. Moving in that direction was impossible during consideration of the Foreign Service Act.

Many of the problems with the grievance system are not capable of legislative solution. Although legislative changes might help, I frankly think that many problems could be better solved by a more assertive Grievance Board. If the members of the Board saw themselves as independent and neutral decisionmakers, the Board would be a stronger and better institution. One of the things we tried to do in this legislation and in the legislative history was to convey to the Grievance Board the interest of Congress in its independence. The Board should not see itself as a management body.

With regard to the definition of a grievance, I think the language of section 1101 provides for a broad range of grievable actions. The area which causes the most concern is that of reprisals. Section 1101(a)(1)(F) makes alleged reprisals grievable. This section should be read without regard to the limitations in section 1101(b). Indeed, the integrity of the grievable mechanism depends on the Grievance Board being able to protect members of the Service who use the system. The list of grievable items in section 1101(a) is a descriptive and not a limiting list. The list in 1101(b) is a list of exceptions and, as such, should be read narrowly by the Grievance Board. Hence, an action should be grievable unless there is a specific, narrow exception in 1101(b).

With regard to the Secretary's veto over Grievance Board decisions, I think a clear statement of congressional intent should be helpful. The way I see the veto provision working is that the agency head should, except in rare cases, adopt and implement the decision of the Grievance Board. The decision of an agency head to veto the decision of foreign policy or national security grounds, is essentially unreviewable. What has to be conveyed to agency heads is congressional will that the decision of the Board be implemented. I personally would like to know every time an agency head refuses to implement the decision of a Grievance Board. I would like to know from the Department why the veto was exercised. If vetoes was exercised too often in the future, I would try to remove this veto power from the Secretary.

During floor consideration, both the gentleman from Florida (Mr. FASCELL) and I promised the gentleman from South Carolina (Mr. DERRICK) that we would look into the working of the grievance system. I am sure both of us intend to keep that commitment.

EQUAL EMPLOYMENT OPPORTUNITY

In numerous places throughout this bill, congressional interest in insuring equal employment opportunity in the Foreign Service is stated. Merit principles, including equal employment opportunity must be followed in every personnel action. The Inspector General of the Department of State and the Foreign Service is specifically instructed to inspect to see that merit principles are being observed.

There is new provision which I think deserves special attention. This bill makes statutory the existence of the Board of Examiners of the Foreign Service. The Board is given the specific statutory mandate of seeing whether the examinations given by the Foreign Service meet the requirements of the Uniform Guidelines of Employee Selection Procedures. While these guidelines, issued by the Equal Employment Opportunity Commission and other agencies, apply fully to all Government agencies, enforcement has been lax. This is because